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ABSTRACT

Presented is a compendium of state lawsuits establishing the legal and constitutional rights of mentally retarded citizens. Cases cover the following rights: to equal educational opportunity; to be free from inappropriate educational classification, labeling, and placement to community services and to treatment in the least restrictive environment; to be free from peonage and involuntary servitude; to be free from restrictive zoning ordinances; to have free access to buildings and transportation systems; to be free from unconstitutional commitment practices; to procreate; and to have equal access to adequate medical services. Usually included for each case are the state, the lawsuit's status, legal advocates involved, principles established, and comments. (CL)

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COMPENDIUM OF LAW SUITS ESTABLISHING THE LEGAL RIGHTS OF MENTALLY RETARDED CITIZENS

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President's Committee on
Mental Retardation
Legal Rights Work Group
Washington, D.C. 20201

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INTRODUCTION

This compendium constitutes a survey of many of the completed or presently pending law suits which have established, or are seeking to establish, the legal and constitutional rights of mentally retarded citizens. As the reader will note, the list of cases involves a wide range of legal issues and comes from courts in all areas of the country. At the present time, the rights of mentally retarded persons may be very strongly influenced by judicial decisions dealing with other handicapping conditions, so cases involving individuals whose handicaps are other than mental retardation are included.

While broad in scope and in geographic area, of necessity this compendium is not totally exhaustive. First, since mentally retarded persons possess all the legal rights any other person possesses, it would be impossible to list all cases affecting every legal right occurring in our legal system. This survey is limited to those subject areas listed in the Table Of Contents, because these are some of the issues about which there is the most developed case law specifically applying to the rights of handicapped persons. Secondly, while the list is reasonably up to date, it must be recognized that new cases and new judicial decisions are continuously developing, almost every day, and very recent cases may not be reflected in this survey.

Very briefly, the sources of the rights of mentally retarded persons (or of any person) are four: (1) Rights may arise under the Constitution of the United States. Concepts such as the right to Equal Protection of the Laws, to Due Process of Law, to avoid Cruel and Unusual Punishment, and many other very important and basic rights have their source in the U.S. Constitution.

(2) Legal rights result from federal legislation and regulations. For example, the Vocational Rehabilitation Act, the Elementary and Secondary Education Act, the Fair Labor Standards Act, Architectural Barriers Act, and many other Congressional enactments have created legal rights under federal law.

(3) State Constitutions are another source of important legal rights. For example, many states have constitutional provisions guaranteeing that the state public education system will be "equally open to all," thus creating a legal right for handicapped persons to public education. Similarly, some states have passed constitutional amendments specifically forbidding discrimination against a person because of a handicapping condition.

(4) State legislation and regulations have resulted in a number of legal rights of mentally retarded individuals. Rights in the areas of civil rights, employment, education, public housing, and community and residential service programs are among those created by state laws and administrative rules and regulations.

Whenever a right arising from one of these four sources is ignored or violated, the affected person may file a lawsuit so that the courts can see that these legal rights are protected. It is such attempts to protect from intrusion rights guaranteed to them by law which have resulted in handicapped persons initiating the lawsuits in this compendium.

CASES BY STATE

Code

E Right to Equal Educational Opportunity.

I Right to Be Free From Inappropriate Educational Classification, Labeling and Placement.

CS Right to Community Services and the Right to Treatment in the Least Restrictive Environment.

P Right to Be Free From Peonage and Involuntary Servitude.

Z Right to Be Free From Restrictive Zoning Ordinances.

A Right of Free Access to Buildings and Transportation Systems.

C Right to Be Free From Unconstitutional Commitment Practices.

Pr Right to Procreate.

M Right of Equal Access to Adequate Medical Services.

Alabama

CS - 1
Pr - 1

Arizona

I - 1

California

E - 6
I - 3
CS - 1
Z - 1
A - 1
Pr - 1

Colorado

E - 1

Connecticut

E - 1
P - 1

District of Columbia

E - 1
CS - 1
P - 1
A - 2
Pr - 1

Florida

E - 4
CS - 1
P - 1

Georgia

CS - 1

Hawaii

E - 2
CS - 1

Idaho

E - 1

Illinois

E - 1
I - 1
CS - 2

Indiana

E - 1
P - 1
C - 1
Pr - 1

Iowa

P - 1

Kentucky

E - 1

Louisiana

E - 2

Maine

P - 1
M - 1

Maryland

E - 2
CS - 2

Massachusetts

I - 2
CS - 2

Michigan

E - 2
Z - 1
C - 1
Pr - 1

Minnesota

E - 1
CS - 1

Missouri

E - 1

Nebraska

CS - 1

Nevada

E - 1

New Jersey

M - 1

New York

E - 11
CS - 3
Z - 2
C - 2

North Carolina

E - 1
Pr - 2

North Dakota

E - 2

Ohio

E - 1
CS - 1
Z - 3
A - 1
C - 1
Pr - 1

Pennsylvania

E - 3
P - 1
C - 2
Pr - 1

Rhode Island

I - 1

South Carolina

C - 1

South Dakota

C - 1

Tennessee

E - 2
CS - 1
P - 2

Texas

E - 1
CS - 1

Utah

E - 1

Virginia

E - 1

Washington

CS - 1

West Virginia

C - 1

Wisconsin

E - 5
CS - 1
Z - 1
C - 2

Section 1: RIGHT TO EQUAL EDUCATIONAL OPPORTUNITY

Issues Involved:

1) Zero Reject Education, i.e. there should be no handicapped children excluded from a free public education.

2) Due Process Protection, i.e. requiring that every special educational placement, denial of placement, and transfer must be preceded by constitutionally adequate notice and hearing procedures.

3) Individualized Program, i.e., requiring an individualized program suited to the needs and designed to maximize the capabilities of each particular child.

4) Periodic Review, i.e. placement in every special educational program must be reviewed periodically to determine whether or not the program has accomplished the specific objectives which were outlined in the individualized program plan.

5) Centralized Responsibility, i.e. allocating to a single agency the duty to insure that educational programs are provided to all children.

6) Least Restrictive Program and Setting, i.e. special education programs should be provided in the least restrictive and denormalizing environment possible so that each child is educated in a setting as close to the normal classroom as possible.

State/Case	Status	Legal Advocates Involved
California		
Burnstein v. Kipp, No. R-19266 (Super. Ct., Cty. of Contra Costa, California, filed Dec. 31, 1970)	Pending hearing	Private Counsel

Comment:

This lawsuit is still on file, but the defendant school district has opened classes for autistic children. Settlement negotiations are currently underway.

State/Case	Status	Legal Advocates Involved
California		
California Association for the Retarded v. State Board of Education, No. 237227 (Super. Ct., Cty. of Sacramento, California, filed July 27, 1973)	Pending hearing on demurrer	Private Counsel, Public Advocates, Inc.
Case v. California, 4 Civil 13127 (Ct. of Appeal, Fourth District, California, July 16, 1974)	Decision entered July 16, 1974	Private Counsel, National Center for Law and the Handicapped (NCLH) for Amici Curiae

Principles Established:

1. "(I)t is the responsibility of the State to provide adequate and equal educational opportunities for all children--handicapped or otherwise."
2. "(A) totally helpless, mentally deficient child or a child suffering from some kind of a handicap which makes him dangerously violent or otherwise unable to function in a normal school setting must be afforded adequate educational opportunities..."

Comment:

The Court of Appeals upheld the determination of the trial court that the autistic child, Lori Case, should not be reinstated in a particular program at the School for the Deaf. She is, however, entitled to an alternative educational program. This is an unpublished opinion having no precedential value in California.

State/Case	Status	Legal Advocates Involved
California		
David P. v. State Department of Education, Civil No. 658826 (Super. Ct. San Francisco County, filed April 9, 1973).	Pending hearing	Youth Law Center
Comment: This suit challenges the constitutionality of the section of California Education Code which limits the number of educationally handicapped students enrolled in special education programs to 2% of total number of students enrolled in a school district.		
Uyeda v. Department of Education, Civil No. 102602 (Super. Ct. Riverside County, filed June 14, 1972).	Pending	Private Counsel
Comment: This lawsuit is still on file, but it is not progressing at the present time, due to the fact that the child was placed in a local public school program after the suit was filed. The goal of the lawsuit was to enjoin the state School for the Deaf from expelling the plaintiff without a due process hearing.		
West v. Secretary of Defense, No. 73-2589-DWW (C.D. Cal., preliminary injunction issued April 4, 1974)	Preliminary injunction	Private Counsel
Comment: This suit challenges refusal to allow CHAMPUS funds to be used for educational services.		

State/Case	Status	Legal Advocates Involved
Colorado		
Colorado Association for Retarded Children v. Colorado, Civil No. C-4620 (D. Colo., filed Dec. 22, 1972)	Two preliminary decisions denying motions to dismiss have been entered. Trial on merits pending.	Private counsel, American Civil Liberties Union (ACLU), Colorado Rural Legal Services, and NCLH (amicus curiae)

Principles Established:

1. Handicapped persons may constitute a "suspect class" under the equal protection clause. 2. Exclusion of handicapped children from public education may result in a suspect wealth classification. 3. "The mere enactment of legislation without actual implementation does not render substantial legal questions moot."

Connecticut		
Kivell v. Nemoitin, Civil No. 143913 (Super. Ct., Fairfield County Conn., July 8, 1972)	Decision rendered July 8, 1972	Private Counsel

Comment:

The Court held that where a school district does not have programs available for a handicapped child it must pay the cost of providing him with an appropriate education at a private facility.

State/Case	Status	Legal Advocates Involved
District of Columbia		
Mills v. Board of Education of District of Columbia, 348 F. Supp. 866 (D.D.C. 1972)	Decision for Plaintiffs.	National Legal Aid and Defenders Association (NLADA), National Law Office, and Center for Law & Social Policy.

Principles Established:

1. The concept of equal educational opportunity must be applied in the public education system. 2. "Due process of law requires a hearing prior to exclusion, termination, or classification into a special program." 3. "The inadequacies of the District of Columbia Public School System whether occasioned by insufficient funding or administrative inefficiency, certainly cannot be permitted to bear more heavily on the "exceptional" or handicapped child than on the normal child." 4. No handicapped child may be excluded from a regular public school assignment unless the child is provided: "(a) adequate alternative educational services suited to the child's needs, which may include special education or tuition grants, and (b) a constitutionally adequate prior hearing and periodic review of the child's status, progress, and the adequacy of any educational alternative."

Florida		
Florida Association for Retarded Children v. State Board of Education, Civil No. 73-250 Civ. PF (S.D. Fla., Abstention order Sept. 26, 1973)	Abstention order issued Sept. 26, 1973.	Private counsel
Refiled in state court under names of:		
State of Florida v. The Dade County Board of Public Instruction, 11th Circuit Ct., Dade Cty. Florida (filed November 26, 1973)	Pending	Private counsel

State/Case	Status	Legal Advocates Involved
Florida		
and		
State of Florida v. Keller, 11th Circuit Ct., Dade Cty. Florida (filed November 26, 1973)	Pending	Private counsel
Wilcox v. Carter, Civil No. 73-41-CIV-J-T (M.D. Fla., Abstention order July 10, 1973)	Abstention order issued July 10, 1973.	Private counsel
Hawaii		
Kekahuna v. Burns, Civil No. 72-3799 (D. Hawaii, Abstention order Dec. 14, 1973)	Abstention order Dec. 14, 1973	Hawaii Legal Aid Society, Private Counsel
Refiled in state court under name of		
Silva v. Board of Education, Civil No. 73-3799 (filed April 12, 1973)	Awaiting trial on the merits.	Hawaii Legal Aid Society, Private Counsel

State/Case	Status	Legal Advocates Involved
Idaho		
Balding v. Independent School District of Boise, Civil No. 1-74-48 (D. Idaho, filed April 2, 1974)	Pending hearing on motion to dismiss	Private Counsel

Comment:

This suit seeks monetary compensation for damages resulting from the failure to provide adequate and appropriate education for a hyperactive child.

Illinois		
Elliot v. Board of Education of the City of Chicago, Illinois, No. 73-CH6104 (Circuit Ct. Cook Cty., Illinois, Chancery Division, Filed in May or June, 1974)	Pending	Private Counsel

Comment:

This suit challenges the legality of a statutory ceiling on the amount of payments which a school district can make to a private facility for an educational program, when the school district has failed to provide such an educational program itself.

Indiana		
Dembowski v. Knox Community School Corporation, Cause No. 74-210 (Circuit Ct. Starke Cty. Ind. Filed May 15, 1974).	Awaiting decision on motion to dismiss	Private Counsel

Comment:

This suit seeks monetary damages for the failure to make an education program available for a "neurologically impaired/learning disabled child."

State/Case	Status	Legal Advocates Involved
Kentucky		
Kentucky Association for Retarded Children v. Kentucky State Board of Education, C.A. No. 435 (E. D. Ky., filed Sept. 1973)	Pre-trial negotiations underway	Private Counsel, NCLH for Amici Curiae
Louisiana		
Lebanks v. Spears, 60 F.R.D. 135 (E.D. La. 1973)	Consent Order entered on April 24, 1973	Harvard Center for Law and Education, U.S. Justice Department (amicus curiae)

Principles Established:

1. Every child who is mentally retarded or suspected of being mentally retarded is entitled to " (a) evaluation and development of a special education plan and periodic review and (b) provision of a free public program of education and training appropriate to his age and mental status..." 2. There is a presumption that "among alternative programs and plans, placement in regula public school class with the appropriate support services is preferable to placement in special public school class and placement in a special public school class is preferable to placement in a community training facility..." 3. Persons who are beyond school-age, but who were denied education when they were of school-age, are entitled to compensatory programs of education. 4. Before any child is classified as mentally retarded, he or she is entitled to full due process procedural rights, including the right to written notice, an alternative evaluation, and a formal hearing.

Comment:

The order in this class action lawsuit applies to all mentally retarded children in Orleans Parish, Louisiana.

State/Case	Status	Legal Advocates Involved
Louisiana		
Marcombe v. Department of Education of the State of Louisiana, Fed. No. 73-102 (M.D. La., filed October 31, 1973)	Pending	Private Counsel
Maryland		
Maryland Association for Retarded Children v. Maryland, Civil No. 72-733-M (D. Md. Abstention Order, Sept. 7, 1973)	Federal Court abstained on Sept. 7, 1973	Private Counsel, NLADA National Law Office
Refiled in state court		
Maryland Association for Retarded Children v. State of Maryland, Equity No. 100/182/ 77676 (Circuit Ct. Baltimore Cty., Md. May 3, 1974)	Decision for plaintiffs	Private Counsel

Principles Established:

1. "(A)ll children can be benefitted by some type of program of service, no matter how seriously or extensively they are retarded." 2. The duty upon local boards of education to maintain a public school system "designed to provide quality education, and equal education opportunity for all youth" includes "the more than twenty-five thousand children in Maryland who suffer in some degree from mental retardation." 3. "The definition that this Court accepts is that education is any plan or structured program administered by competent persons that is designed to help individuals achieve their full potential." 4. "There is no distinction between the words training and

State/Case	Status	Legal Advocates Involved

Maryland

education. A child may be trained to read and write, or may be educated to read and write. A child may be educated to tie his shoes or trained to tie his shoes. Every type of training is at least a sub-category of education."

Comment:

This case was a state-wide class action which found a right to educational programs for mentally retarded children pursuant to Maryland statutes.

Michigan

Harrison v. State of Michigan, 350 F. Supp. 846 (E.D. Mich. 1972)	Court held the case moot because the state of Michigan had already remedied the educational exclusion problem attacked by the plaintiffs.	Michigan Legal Services, Harvard Center for Law and Education.

Principles Established:

1. "(P)roviding education for some children, whole not providing education for others (in this instance, handicapped children) is a denial of equal protection."
2. "(A)lthough the matter is at this time premature because the process of implementation is proceeding in good fashion, and because there is no way in which this court could proceed with implementation faster, if it should turn out either that the act is not fully and speedily implemented and funded or that procedures do not comply with due process, judicial remedies would then be available to the injured persons."

State/Case	Status	Legal Advocates Involved
Michigan		
Fletcher v. Board of Education for the Portage Public Schools, No. A 74100530 AW (Circuit Ct. Kalamazoo Cty., Mich., filed March 14, 1974)	Pre-trial proceedings	Private Counsel

Comment:

This case is an action on behalf of a single plaintiff to obtain an educational program pursuant to state law.

Michigan Association for Retarded Citizens v. State Board of Education of the State of Michigan, No. G-74-385 C.A. 5 (W.D. Mich., filed October 30, 1974)	Hearing on motion for preliminary injunction, Nov. 13, 1974.	Private Counsel, NCLH

Comment:

This is a state-wide class action seeking educational programs for handicapped persons residing in state institutuions or released upon "convalescent status" from such institutions.

State/Case	Status	Legal Advocates Involved
Minnesota		
Donnelly v. Minnesota, Civil No. 3-72-141 (D. Minn., filed May 2, 1973)	Counsel stipulated to	Private Counsel
Comment: Since the state had passed legislation to provide educational programs for members of the plaintiff class, the parties agreed to stipulate to dismissal of the case.		
Missouri		
Radley v. State of Missouri, C.A. No. 73-C-556 (3) (E.D. Mo., filed Sept. 1973)	Injunctive claim dismissed for mootness in Apr. 1974. Damage claim dismissed in July, 1974.	A.C.L.U.
Comment: State mandatory special education legislation was passed assuring education for all handicapped children.		

State/Case	Status	Legal Advocates Involved
Nevada		
Brandt v. Nevada, Civil No. R-2779 (D. Nev. filed Dec. 22, 1973)	Pending	Private Counsel
New York		
In re Apple, 73 Misc. 2d 553, 342 N.Y.S. 2d 352 (Family Ct. City of New York, Kings Cty. 1973)	Decision for Plaintiff	Private Counsel

Comment:

The Court ordered the State to pay for the education of a handicapped child.

In re Borland, 340 N.Y.S. 2d 745, 72 Misc. 2d 766 (Fam. Ct. Monroe Cty., 1973)	Decision for Plaintiff	Private Counsel

Comment:

The Court ordered the State and County of residence to share the costs for the education of a physically handicapped child.

In re Downey, 72 Misc. 2d 772, 340 N.Y.S. 2d 687 (Family Ct. New York Cty. 1973)	Decision for Plaintiff	Private Counsel

Principles Established:

1. "In order to assure a handicapped child the equal protection of the law, the opportunity for an education according to his needs must be available." 2. "The burden is therefore on the state to assure that the educational program provided

State/Case	Status	Legal Advocates Involved
New York		
each child is appropriate to his needs." 3. "To order a parent to contribute to the education of his handicapped child when free education is supplied to all other children would be a denial of the constitutional right of equal protection, United States Constitution Amendment XIV; New York State Constitution Article XI, Section 1."		
In re H., 337 N.Y.S. 2d 969, 40 A.D. 860, 72 Misc. 2d 59 (Fam. Ct. Queens Cty., 1972)	Decision for Plaintiff	Brooklyn Legal Aid Society
Comment: The Court ordered the City of New York to pay for the education of a handicapped child.		
In re Held, Doc. No. H-2-72 & H-10-71 Family Court, Westchester County New York, Nov. 29, 1971)	Decision for Plaintiff	Legal Aid Society of Westchester Cty.
Comment: The Court ordered the City of Mt. Vernon and the State of New York to pay for the education of a physically handicapped child.		
In re K., 74 Misc. 2d 872, 347 N.Y.S. 2d 271 (Family Ct. City of New York, Kings Cty. 1973)	Decision for Plaintiff	Private Counsel

State/Case	Status	Legal Advocates Involved

New York

Principle Established:

"(I)t would be a denial of the right of equal protection and morally inequitable not to reimburse the parents of a handicapped child for monies they have advanced in order that their child may attend a private school for the handicapped when no public facilities were available while other children who are more fortunate can attend public school without paying tuition and without regard to the assets and income of their parents."

In re Kirschner, 74 Misc. 2d 20, 344 N.Y.S. 2d 164 (Family Ct., Monroe Cty. 1973)	Decision for Plaintiff	Private Counsel

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Principles Established:

1. "(A)ll children including the handicapped are entitled to such education as is reasonably suited to their needs without charge." 2. "(T)o make a charge to a parent for the cost of educating a handicapped child while providing free public education for non-handicapped and some handicapped children violates the equal protection provisions of the Fourteenth Amendment of the United States Constitution..."

In re L., 342 N.Y.S. 2d 231, 73 Misc. 2d 733 (Fam. Ct. N.Y. Cty., 1973)	Decision for Plaintiff	Private Counsel

Comment:

The Court ordered the City of New York to pay for the education of "an allegedly physically handicapped child."

State/Case	Status	Legal Advocates Involved
New York		
In re Leitner, 328 N.Y.S. 2d 237, 38 A.D. 2d 554 (S. Ct. N. Y. App. Div., 1971) and 337 N.Y.S. 2d 267, 40 A.D. 2d 38 (Supr. Ct. N.Y., App. Div. 1972)	Decision for Plaintiff	Private Counsel

Comment:

The Court ordered the State of New York and the county of residence to share the costs of educating "an autistic 12-year-old boy who was suffering from a type of schizophrenia with likelihood of organic substrata."

Reid v. Board of Education of New York, 453 F. 2d 238 (2d Cir. 1971)	Federal court abstained but retained jurisdiction.	MFY Legal Services

Refiled as administrative proceeding.

In re Reid, No. 8742 (Commissioner of Education of New York, Nov. 26, 1973)	Decision for plaintiffs	MFY Legal Services

Principles Established:

1. "Section 4404 of the Education Law clearly expresses the public policy of this State that all handicapped children be provided with adequate educational services." 2. The State must cease the use of a "Medical Discharge Register" and plans must be prepared to: a) eliminate waiting lists, b) regionalize evaluation of handicapped children, c) meet the needs of handicapped persons in secondary schools, and d) notify parents of available services and personnel. 3. "It is further ordered that all students who have been diagnosed as handicapped be placed immediately in public school classes or, if public school classes are not available, in private schools under contract in accordance with the provisions of paragraph b of subdivision 2 of section 4404 of the Education Law."

State/Case	Status	Legal Advocates Involved
New York		
Comment: The decision in this class action suit applies to all handicapped children in the city of New York.		
North Dakota		
In re G.H., 218 N.W. 2d 441 (N. Dak. 1974)	Decision in favor of the handicapped child	Private Counsel, NCLH for Amici Curiae

State/Case	Status	Legal Advocates Involved

North Dakota

Principles Established:

1. "(A)ll children in North Dakota have the right, under the State Constitution, to a public school education." 2. "Handicapped children are certainly entitled to no less than unhandicapped children under the explicit provisions of the Constitution." 3. "G.H.'s terrible handicaps were just the sort of 'immutable characteristic determined solely by the accident of birth' to which the 'inherently suspect' classification would be applied." 4. "We hold that G.H. is entitled to an equal educational opportunity under the Constitution of North Dakota, and that depriving her of that opportunity would be an unconstitutional denial of equal protection under the Federal and State Constitutions and of the Due Process and Privileges and Immunities Clauses of the North Dakota Constitution."

Comments:

This decision of the North Dakota Supreme Court is the highest court ruling on the issue of equal educational opportunity thus far. Especially important is the Court's determination that handicapped children constitute a "suspect class" under the Equal Protection Clause.

North Dakota Association for Retarded Children v. Peterson, Civil No. 1196 (D.N.D., filed Nov. 28, 1972)	Delayed pending implementation of state mandatory special education law	Private Counsel, NCLH (amicus curiae)

Comment:

This is a state-wide class action lawsuit.

State/Case	Status	Legal Advocates Involved
Ohio		
Cuyahoga County Association For Retarded Children & Adults v. Essex, C.A. No. C74-587 (N.C. Ohio, Filed June 28, 1974).	Pretrial proceedings	Private Counsel

Comment:

This is a class action suit seeking public education programs for mentally retarded children.

Pennsylvania		
Commonwealth v. Payne, No. 905 C.D. 1974 (Commonwealth Ct. of Pa., 1974)	Awaiting hearing	Pittsburgh Neighborhood Legal Services Association

Comment:

This suit seeks to require the state to provide the least restrictive available educational program. It challenges the practice of requiring a child to go to a residential institution to obtain an educational program.

Frederick L. v. Thomas, C.A. No. 74-52 (E.D. Pa., filed Jan. 16, 1974)	Pre-trial procedures	Philadelphia Community Legal Services

Comment:

This is a class action suit on behalf of learning disabled children.

State/Case	Status	Legal Advocates Involved
Pennsylvania		
Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania, 334 F. Supp. 1257 (E.D. Pa. 1971) AND 343 F. Supp. 279 (E.D. Pa. 1972)	Consent order	Private Counsel

Principles Established:

1. The public school officials are required to provide to every mentally retarded child "access to a free program of education and training." 2. Notice, opportunity for a hearing and periodic reevaluation are required regarding any change in educational status. 3. Labeling a child "mentally retarded" imposes a serious stigma upon that child, and, therefore, full due process procedural protections are necessary before such a label may be imposed. 4. "All mentally retarded persons are capable of benefitting from a program of education and training; that the greatest number of retarded persons, given such education and training, are capable of achieving self-sufficiency and the remaining few, with such education and training are capable of achieving some degree of self-care; that the earlier such education and training begins, the more thoroughly and the more efficiently a mentally retarded person will benefit from it and whether begun early or not, that a mentally retarded person can benefit at any point in his life and development from a program of education."

Comment:

The successful consent order in this landmark case was the inspiration for the large number of similar class action lawsuits which were subsequently filed.

State/Case	Status	Legal Advocates Involved
Tennessee		
Rainey v. Tennessee Department of Education, No. A-3100 (Chancery Ct. of Davidson County, Tennessee, July 29, 1974.	Consent agreement signed July 25, 1974	Memphis and Shelby County Legal Services Association, Legal Services of Nashville

Principles Established:

1. All handicapped children of school age shall be accorded access to a free program of appropriate special education services as soon as possible. 2. "All children can benefit from an appropriate education program and have a legal and moral right to a free public education. Tennessee's Mandatory Education Law is based upon these two premises and guarantees an equal education opportunity to all handicapped children no later than the beginning of the school year 1974-75." 3. "(H)andicapped children shall be provided special education services in as normal an educational environment as possible and that the labeling of individual children should be minimized and eliminated. Thus, placement of a child in the regular classroom is preferable to placement in separate special classes, and placement of a child in a special class is preferable to any other educational assignment..." 4. Compulsory attendance statutes apply to handicapped children. 5. Very comprehensive, specified procedures must be followed for review of placement decisions.

Rainey v. Watkins, Civil No. 77620-2 (Chancery Ct., Shelby County Tenn. Writ of Mandamus issued April 6, 1973)	Writ of Mandamus issued April 6, 1973	Memphis and Shelby County Legal Services Association

Comment:

This case successfully forced the Memphis City Board of Education to perform a census of handicapped children as required by Tennessee statutes.

State/Case	Status	Legal Advocates Involved
Texas		
Epperson v. Board of Trustees, Pasadena Independent School District, C.A. No. 74-H-394 (S.D. Tex., filed March 18, 1974)	Temporary restraining order issued Mar. 20, 1974	Private Counsel

Comment:

This suit seeks reinstatement of a child who was expelled for the length of his hair, which his parents allege was necessary to cover up a congenital birth defect.

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Utah		
Wolf v. Legislature of the State of Utah, Civil No. 182646 (3rd Jud. Dist. Ct. Utah, Jan. 8, 1969)	Decision for Plaintiffs	Private Counsel

Principles Established:

"Education today is probably the most important function of state and local government. It is a fundamental and inalienable right and must be so if the rights guaranteed to an individual under Utah's Constitution and the U.S. Constitution are to have any real meaning. Education enables the individual to exercise those rights guaranteed him by the Constitution of the United States of America.

Today it is doubtful that any child may reasonably be expected to succeed in life if he is denied the right and opportunity of an education. In the instant case, the segregation of the plaintiff children from the public school system has detrimental effects upon the children as well as their parents."

State/Case	Status	Legal Advocates Involved
Utah		
Comment: The court ordered two so-called "trainable" mentally retarded children admitted to the public schools.		
Virginia		
Tidewater Society for Autistic Children v. Virginia, Civil No. 426-72-N (E.D. Va., Dec. 26, 1972)	Dismissal for mootness in light of state legislation.	Private Counsel
Wisconsin		
Doe v. Board of School Directors of the City of Milwaukee, Case No. 377770 (Circuit Ct. Milwaukee County, Wisc., filed Apr. 7, 1970)	Temporary injunction issued April 13, 1970. The case was thereafter settled by stipulation of the parties on March 30, 1972.	Private Counsel, Freedom Through Equality
Comment: The case successfully attacked the use of waiting lists to deny a public education program to mentally retarded children.		

State/Case	Status	Legal Advocates Involved
Wisconsin		
Marlega v. Board of School Directors of the City of Milwaukee, Civil No. 70-C-8 (E.D. Wis., Sept. 17, 1970)	Temporary injunction issued January 14, 1970. The case was settled by agreement between the parties and dismissed on Sept. 17, 1970.	Private Counsel, Freedom Through Equality
Pacyna v. Board of Education, Joint School District No. 1, City of Stevens Point, 57 Wis. 2d 562, 204 N.W. 2d 671 (1973)	Decision for Plaintiff	Private Counsel

Principle Established:

"Education is for all children and if a child is excluded because of immaturity or other reasons, his educational needs must be otherwise provided for by the state."

Comment:

The Wisconsin Supreme Court ordered an educational program to be provided for an "emotionally immature" kindergarten student.

Panitch v. Wisconsin, Civil No. 72-C-467 (E.D. Wis., filed Aug. 14, 1972)	Awaiting hearing on implementation of state law.	Private Counsel, NCLH (amicus curiae)

Comment:

This case involves a federal court overseeing the implementation of a comprehensive state mandatory special education law.

State/Case	Status	Legal Advocates Involved
Wisconsin		
State of Wisconsin v. Nusbaum, State No. 2 (Wisconsin Supreme Court, Decided June 28, 1974)	Decision entered Jun. 28, 1974	Private Counsel

Comment:

This case upheld the practice of the state contracting with private agencies for special education services when there are not enough public programs available. The Wisconsin Supreme Court recognized the state's obligation to provide "equal educational opportunities to handicapped children" and held that this duty "is beyond a doubt the most bona fide of public purposes." To reach this goal of educational programs for all handicapped children, the Court ruled that contracts with private educational agencies are permissible.

Section 2: RIGHT TO BE FREE FROM INAPPORPRIATE EDUCATIONAL CLASSIFICATION, LABELING AND PLACEMENT

Issues Involved:

1) Recognition of the "stigma" involved in labeling a person "handicapped", "mentally retarded," etc.

2) The right to placement in an educational program appropriate to one's needs, abilities, and functional level.

3) Use of culturally biased intelligence tests, resulting in the misclassification and inappropriate educational placement of members of minority groups.

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The following cases mentioned in the Right to Equal Educational Opportunity section also stand for the principle that classification, labeling and placement affect such fundamental interests that full due process procedural rights attach:

Mills v. Board of Education of District of Columbia, supra, p. 6; Lebanks v. Spears, supra, p. 9; P.A.R.C. v. Commonwealth of Pennsylvania, supra, p. 20; and Marlega v. Board of School Directors of the City of Milwaukee, supra, p. 24.

State/Case	Status	Legal Advocates Involved
Arizona		
Guadalupe Organization v. Tempe Elementary School District No. 3, No. Civ. 71-435 PHX (D. Ariz. May 9, 1972)	Stipulation of the parties approved by the court on May 9, 1972	Maricopa County Legal Aid Society, Harvard Center for Law and Education

Comment:

Procedures were developed to safeguard against the problem of children being inappropriately placed in classes for handicapped children because their primary language was other than English.

State/Case	Status	Legal Advocates Involved
California		
Diana v. State Board of Education, C-70 37 RFP (N.D. Cal. Feb. 5, 1970)	Stipulation of the parties approved by the court on Feb. 5, 1970. Additional stipulation approved June, 1973. Contempt order against defendants entered on May 24, 1974.	Private Counsel

Comment:

Parties agreed to the development of a test which would not be biased against Mexican-Americans, and to compile statistics as to the numbers and percentages of various racial and ethnic groups in "Educable Mentally Retarded" classes. All Mexican-American and Chinese children presently in classes for the mentally retarded must be retested and reevaluated.

Larry P. v. Riles, 343 F. Supp. 1306 (N.D. Cal. 1972)	Decision for Plaintiffs on Motion for Preliminary Injunction	Mission Law Office

Principle Established:

"(N)o black student may be placed in EMR class on the basis of criteria which rely primarily on the results of I.Q. tests as they are currently administered, if the consequence of use of such criteria is racial imbalance in the composition of EMR classes."

Ruiz v. State Board of Education, No. 218294 (Superior Ct. Sacramento Cty. Cal., filed Dec. 16, 1971)	Pending	California Rural Legal Assistance

Comment:

This case challenges group intelligence tests which allegedly discriminate against persons from Spanish-speaking homes and different cultural backgrounds.

State/Case	Status	Legal Advocates Involved
Illinois		
Strickland v. Deerfield Public School District 109, No. 73L 284 (Circuit Ct. Lake Cty. Illinois, filed June 4, 1973)	Pending decision on motion to dismiss	Private Counsel
Comment: This case involves a claim of $100,000 in damages for school official's failure to provide appropriate education.		
Massachusetts		
Association for Mentally Ill Children v. Greenblatt, C.A. No. 71-3074-J (D. Mass. filed Dec. 30, 1971)	Pending	Center for Law and Education, Boston Legal Assistance Project
Comment: This suit seeks publicly supported educational programs and constitutionally adequate placement and review procedures for children labelled "emotionally disturbed."		
Stewart v. Phillips, C.A. No. 70-1199-F (D. Mass. filed Sept. 14, 1970)	Pending	Boston Legal Assistance Project, Center for Law and Education

State/Case	Status	Legal Advocates Involved
Massachusetts		
Comment: This suit challenges the denial of appropriate educational programs for mentally retarded children. It and the preceding case (Association for Mentally Ill Children v. Greenblatt) have been stayed, pending the implementation of state special education legislation.		
Rhode Island		
Rhode Island Society for Autistic Children v. Reisman, C.A. file No. 5081 (D.R.I., filed Dec. 1972)	Extensive pre-trial discovery	Rhode Island Legal Services, Center for Law and Education
Comment: This case seeks educational programs which are appropriate. It is a class action on behalf of "Exceptional Handicapped Children."		

Section 3: RIGHT TO COMMUNITY SERVICES AND THE RIGHT TO TREATMENT IN THE LEAST RESTRICTIVE ENVIRONMENT

Issues Involved:

1) Individualized Program Plan designed to maximize the abilities, administered in a humane physical and psychological environment and supervised by an adequate and qualified staff.

2) Programs must be provided in the least restrictive environment possible. The unconstitutionality of the traditional practice of States institutionalizing handicapped persons without providing less restrictive alternatives.

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State/Case	Status	Legal Advocates Involved
Alabama		
Wyatt v. Stickney (now Wyatt v. Aderholt), 334 F. Supp. 1341 (M.D.Ala. 1971); 325 F. Supp. 781 (M.D.Ala. 1971), and 344 F. Supp. 387 (M.D.Ala. 1972).	Federal District Court Opinion for Plaintiffs, appealed by Alabama. Joined with Burnham v. Dept. of Public Health (Ga. case) Affirmed by 5th Cir. Nov. 8, 1974.	Private, CLSP, NLADA, US Dept. of Justice, (Amicus), Mental Health Law Project

Principles Established:

The constitutional right to treatment necessitates the following: (1) An individualized treatment program; (2) A humane physical and psychological environment; (3) An adequate and qualified staff; (4) Programs provided in the least restrictive manner possible.

State/Case	Status	Legal Advocates Involved
California		
Revels v. Brian, No. 658-044 (Super. Ct. City and County of San Francisco), filed March 22, 1973	Pending hearing	Private Counsel
District of Columbia		
Robinson v. Weinberger, CA No. 74-285 (D.C. for D.C.), filed Feb. 14, 1974	Pending hearing	Private Counsel Mental Health Law Project

Comment:

This case seeks declaration of a constitutional Right to Treatment and an obligation to apply the "least restrictive alternative" in developing treatment programs for institutionalized handicapped persons.

Florida		
Donaldson v. O'Connor, 493 F. 2d 507 (5th Cir. 1974).	Decision upholding lower court finding for Donaldson April 26, 1974 Certiorari granted by U.S. Supreme Court	Private Counsel, ACLU

Principles Established:

There is a constitutional Right to Treatment under the 14th Amendment for a civilly involuntarily committed mental patient and failure to provide such treatment, while continuing to confine, requires the award of damages.

State/Case	Status	Legal Advocates Involved
Georgia		
Burnham v. Dept. of Public Health, 349 F. Supp. 1335 (N.D.Ga.) Aug. 3, 1972 Appeal filed Aug. 1973, CA No. 72-3110 (5th Cir.)	On appeal; joined with Wyatt v. Aderholt, Wyatt v. Stickney. Remanded by 5th Cir. Ct. of Appeals for further hearings in the District Court.	ACLU, Private Counsel

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Comment:

The decree found no constitutional Right to Treatment. Plaintiffs appealed and the case was joined on appeal with Wyatt v. Stickney. The Court of Appeals has remanded this case for a hearing to the District Court.

Hawaii		
Gross v. State of Hawaii, Civil No. 43090 (Cir. Ct. of Hawaii, Sept. 1974)	Complaint filed Sept. 17, 1974	Private Counsel

Comment:

Complaint alleges: (1) Inadequate programs; (2) Inadequate staff and facilities; (3) Failure to provide less drastic alternatives.

Illinois		
Nathan v. Levitt, No. 74-CH 4080 (Cir. Ct., Cook County, Ill.) filed Aug., 1974	Pending hearing	Patient Legal Services

State/Case	Status	Legal Advocates Involved
Illinois (Con't.)		
Wheeler v. Glass, CA No. 71-1677 (D.C.Ill.) filed Nov. 13, 1970; 473 F. 2d 983 (7th Cir. 1973)	Decision	Private Counsel
Maryland		
United States v. Solomon, CA No. N-74-181 (D. Md., filed Feb. 21, 1974)	Pending hearing (pre-trial)	U.S. Justice Dept.

Comment:

Case alleges violation of 8th, 13th and 14th Amendments for State's failure to (1) provide care and treatment for residents and (2) protect them from harm, and for allowing peonage and involuntary servitude to exist.

M.A.R.C. v. Solomon, CA NO. N-74-228 (D.Md. 1972)	Pending hearing (pre-trial)	Community Mental Health Legal Services, Baltimore Legal Aid

Comment:

This case challenged the institutional practices and specifically seeks provision of the least restrictive alternatives.

State/Case	Status	Legal Advocates Involved
Massachusetts		
Ricci v. Greenblatt, CA No. 72-469-T (D. Mass. filed Feb. 7, 1972)	Consent Decree entered Nov. 12, 1973	Private Counsel
Principles Established: Constitutional rights require: (1) renovation of physical plant; (2) increased staff; (3) increased program capacity; (4) development of community alternatives.		
McElroy v. Goldmark, CA No. 74-2768 (D. Mass. filed July 24, 1974)	Pre-trial proceedings	Private Counsel
Minnesota		
Welsch v. Likins, 4-72 Civ. 451 (D. Minn., filed Aug. 30, 1972), 373 F. Supp. 487 (D. Minn. 1974)	Decree for Plaintiffs Feb. 15, 1974, 373 F. Supp. 487, Final order Sept., 1974.	Minnesota Legal Services
Principles Established: There is a constitutional right to Care and Treatment under the due process clause of the Constitution and a comparable right under Minnesota statutes. Also there is a constitutional right to the "least restrictive alternative" and the state has an affirmative duty to develop and provide appropriate community services. Dicta states that confinement without treatment is probably "cruel and unusual punishment" under the 8th Amendment to the Constitution.		

State/Case	Status	Legal Advocates Involved
Nebraska		
Horacek v. Exon, CA no. CV72-L-299 (D.C.Neb.), filed Sept. 28, 1972; 357 F. Supp. 71 (D.Neb., 1973)	Decision on Motion to Dismiss. Trial, Dec. 1974	Private, NCLH, US Justice Dept.

Principles Established:

The interests of parents and their retarded children are or may be inconsistent and parent's commitment of such children to an institution cannot be viewed as voluntary.

Comment:

This case raises the challenge of equal protection as the state of Nebraska operates two systems for providing services for the retarded: the institution and community services. The community programs are less restrictive of the rights of retarded citizens.

New York		
NY. State Assoc. for Retarded Children v. Rockefeller and Parisi v. Rockefeller, 72 CA No. 356, 357 (E.D.N.Y.), filed March 17, 1972; 357 F. Supp. 752 (E.D. N.Y. 1973)	Decision; Hearing scheduled on Right to Treatment issue Sept. & Nov. 1974	ACLU, Legal Services, US Justice Dept. (amicus) Mental Health Law Project

Comment:

Preliminary decision found constitutional right to be "free from harm" and a positive duty on the part of the Federal courts to protect citizens from harm.

State/Case	Status	Legal Advocates Involved
In Re D, 70 Misc. 2d 953, (N.Y. 1972).	Decision	Private Counsel

Principles Established:

Constitutional rights apply with even more force and intent to the helpless and the handicapped. The Fourteenth Amendment protects not merely the freedom from bodily restraint, but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, to establish a home and bring up children.

Rennelli v. Dept. of Mental Hygiene, Bronx Cty., transferred to Richmond Cty. (Sept. 1972)	Decision	Private Counsel

Principles Established:

Constitutional right to care, treatment, training, etc.

North Carolina

North Carolina Association for Retarded Children v. North Carolina, Civil No. 3050 (E. D.N.C., filed May 18, 1973)	Pre-Trial Procedures	Private Counsel, Justice Department for U.S. (plaintiff intervenor)

Comment:

This is a state-wide class action seeking habilitative treatment and equal educational rights for mentally retarded children. An amendment to the complaint has added a claim of discrimination against the plaintiffs in violation of the Federal Rehabilitation Act of 1973. The intervention of the United States is significant.

State/Case	Status	Legal Advocates Involved
Ohio		
Davis v. Watkins, CA No. C73-205 (N.D. Ohio, May 1973)	Decision Sept. 9, 1974	Private Counsel, U.S. Dept. of Justice (Amicus)

Comment:

The Court rendered partial decision incorporating many of Wyatt standards in this case which challenges the commitment and treatment of handicapped persons at Ohio's Maximum Security and Mental hospital.

Tennessee		
Saville v. Treadway, CA No. 6969 (M.D. Tenn., filed April 10, 1973). (Also found in Section 7 of this compendium)	Decision March 1974	Private Counsel
Washington		
Boulton v. Morris, No. 781659 (Wash. Super. Ct. King County, filed June 1974)	Pending (pre-trial)	Mental Health-Retardation Legal Services Project

Comment:

Case asks for an injunction to provide more staff and better programs at the institution in question and to cease admissions until they provide same. Defendants have discriminated against plaintiffs because they have failed to provide education, guidance, care, treatment, and rehabilitation as required by statute. there are no individualized treatment programs.

State/Case	Status	Legal Advocates Involved
Wisconsin		
Weidenfeller v. Kidulis, 43 L.W. 2110 (E.D. Wis. Aug. 21, 1974).	Preliminary Decision August 21, 1974	

Principles Established

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The Court found sufficient basis for allegations that mentally retarded patients have been coerced to perform nontherapeutic labor for institutions to which they were civilly committed states claim for which relief can be awarded under Fair Labor Standards Act, Thirteenth Amendment and constitutional right to treatment.

Section 4: THE RIGHT TO BE FREE FROM PEONAGE AND INVOLUNTARY SERVITUDE

Issues Involved:

1) The unconstitutionality of requiring institutional residents to perform work without pay.

2) The enforcement of the Fair Labor Standards Act of 1966.

3) The denial of Social Security and other work benefits.

State/Case	Status	Legal Advocates Involved
Connecticut		
Albrecht v. Carlson, CA No. H-263 (D.Conn. filed Dec. 13, 1973)	Plaintiff's Motion for Summary Judgment granted June, 1974	

Principle Established:

It is unconstitutional to appoint Commissioner of Department of Finance and Control as Conservator for all persons presently or formerly residing in any State institution, (whose assets or income did not exceed $5,000) because present statute has no provisions for notice or hearing prior to appointment.

Comment:

Case sought to enjoin Defendant from enforcing statute and the Order returned all property placed in trustee accounts to the plaintiff class. Order is being prepared. Decision to grant summary judgement based on McAuliffe v. Carlson, CA No. 15-687 decided May 30, 1974.

State/Case	Status	Legal Advocates Involved
District of Columbia		
Souder v. Brennan, 362 F. Supp. 808 (D.D.C. 1973)	Decision for Plaintiffs Nov. 14, 1973	Mental Health Law Project CLSP

Principle Established and Comment:

Department of Labor must enforce provisions of Fair Labor Standards Act (FLSA) of 1966 and provide guidelines and policy directives as to patient-laborers in State institutions. Superintendents of State Institutions must keep required records of patient-laborers and inform them of their rights under this decision.

Florida		
Roebuck v. Florida Department of Health and Rehabilitation Services, CA No. TCA 1041 (N.D. Fla. filed July 6, 1972)	Pending hearing	Private, Legal Services
Indiana		
Hartnett v. Murray	Pending (pre-trial)	Private Counsel

Comment:

Requests damages for residents past work.

State/Case	Status	Legal Advocates Involved
Iowa		
Brennan v. Iowa, No. 73-1500 (Ct. of Appeals, 8th Circuit)	Decision Feb. 26, 1973	U.S. Department of Labor
Comment: The case is an extension of Souder v. Brennan. Decision states that employees in state institutions are engaged in "interstate commerce" and therefore subject to the FLSA.		
Maine		
Jortburg v. U.S. Department of Labor, CA No. 13-113 (D. Me.)	Consent Decree, June 18, 1974	Legal Services
Comment: An important precedent in which the State agreed to pay all resident workers, regardless of their level of performance, whether the work is therapeutic or not. They will only pay below minimum wage after following certification procedures set by the U.S. Department of Labor.		
Pennsylvania		
Downs v. Department of Public Welfare, CA. No. 73-1246 (E.D. Pa. May 6, 1974)	Consent Decree	Mental Patient Civil Liberties Project

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State/Case	Status	Legal Advocates Involved
Tennessee		
Townsend v. Treadway, CA No. 6500 (M.D.Tenn. filed Feb. 16, 1972)	Federal Court dismissed. Refiled in State Court (see Comments)	Private, NLADA

Comment:

The Federal court determined that in view of the Supreme Court decision in Employees of the Department of Health and Welfare of Missouri v. Department of Health and Welfare of Missouri, No. 71-1021 (certiorari granted by U.S. Supreme Ct. Mar. 27, 1972; decided Apr. 18, 1973), it would have to dismiss the federal court action and directed Plaintiffs to seek remedy in the state courts. Plaintiffs refiled in state court to determine damages.

Townsend v. Clover Bottom No. A-2576 (Chancery Ct. Part 2, Nashville) Feb., 1974	Private counsel

Section 5: RIGHT TO BE FREE FROM RESTRICTIVE ZONING

Issues Involved:

Conflict between the constitutional right of handicapped persons to live in community based facilities and restrictive zoning ordinances.

State/Case	Status	Legal Advocates Involved
California		
Defoe v. San Francisco Planning Commission, Civil No. 30789 (Super. Ct. San Francisco County filed August 17, 1970)	On appeal	ACLU, Private counsel

Comment:

Seeks to obtain ruling from highest state court that zoning practices which do not allow setting up halfway-type houses constitute an unconstitutionally restrictive use of the "police powers" of the city planning board.

Michigan		
Doe v. Damm, CA No. 627 (E.D. Mich., filed Mar. 8, 1973)	Withdrawn by Plaintiffs (but see comments)	Private counsel

Comment:

City attorney allowed halfway house to be operated and withdrew his objections; Plaintiffs therefore withdrew their suit.

State/Case	Status	Legal Advocates Involved
New York		
Stoner v. Miller, 377 F. Supp. 177 (E.D. N.Y. 1974)	Decision	Mental Health Law Project, U.S. Justice Dept. (Amicus)

Principles Established:

Struck down zoning ordinances which sought to exclude released mental patients

City of White Plains v. Ferraioli, et al, 34 N.Y. 2d 300 (1974) — Decision

Comment:

This case distinguished Boraas v. Belle Terre as not applicable to group homes for handicapped persons.

Ohio		
Boyd v. Gateways to Better Living, Case No. 73-CI-531 (Mahoning County Court of Common Pleas), Filed Apr. 18, 1973	Judgment for Defendants, June, 1974	Private

Comment:

Neighbors sought a permanent injunction against the issuance of a building permit for a home for retarded persons in a residential neighborhood. Court denied the injunction, holding that since the county, which was paying for part of the support of the home, could have taken possession of the property by eminent domain, the zoning ordinance of the City would not apply to the home.

State/Case	Status	Legal Advocates Involved
Ohio (cont.)		
Driscoll v. Goldberg, Case No. 73 C.A. 59 (Ct. of Appeals, 7th Dist., Ohio)	State Supreme Court Decision, Apr. 9, 1974	Private Counsel

Principles Established:

Statute under which the zoning power was contained to restrict occupancy in single family areas defined "family" in such a way that the proposed use for a home for the mentally retarded would be covered and therefore that the town could not exclude them.

Unteed v. Lehman, 77 Ohio L.Abs. 353, 150 N.E. 2d. 509 (1957)	Decision	

Comment:

"The Court would like to say further that it is the responsibility of the public at large not to ignore the problems which exist and which may in many instances not touch them except indirectly, but to accept the responsibility to provide, as far as possible, an environment so that all people might have an opportunity to live a healthy, normal existance and not to wash their hands of the problems that are such as contained in the case and many others. It is time that we take a sensible view toward the social problems which come from an increased urban population and not to put the burden upon certain public servants alone for the solution of all people in a democracy and that the one thing that each of us should strive for above all, in our duty to others, is to see that all people are adequately furnished with the facilities which will provide them with the type of an environment which will help them to lead happy and normal lives. Let us remember that with longevity becoming a common thing, if each of us lives long enough, mental retardation and senility may be our lot, so we can see that the problem here presented is one to be solved and not ignored."

State/Case	Status	Legal Advocates Involved
Wisconsin		
Browndale International v. Board of Adjustment, Case No. 135-488 (Cir. Ct. of Dane County), U.S. Supreme Ct. Docket No. 73-886, Petition for Certiorari filed Dec. 6, 1973.	Petition for Certiorari denied Apr. 1974	Private Counsel

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Comment:

Certiorari denied.

Section 6: RIGHT OF FREE ACCESS TO BUILDINGS AND TRANSPORTATION SYSTEMS

Issues Involved:

1) The unconstitutionality of building and renovating public buildings which are inaccessible to handicapped persons.

2) The enforcement of Federal and State Statutes prohibiting such inaccessibility of public buildings.

State/Case	Status	Legal Advocates Involved
District of Columbia		
Urban League v. Washington Metropolitan Area Transit Authority (D.D.C., filed April 14, 1972)	Decision for Plaintiffs June 29, 1973 and injunction Oct. 9, 1973	Urban League

Comment:

This is a leading case in which the Court granted partial summary judgment declaring that Defendants had a legal obligation to design subway system for use by handicapped persons. The injunction, issued later, enjoined WMATA from commercially operating the subway system until it was made accessible to physically handicapped persons.

Thoben v. Eastern Airlines, etc., Case No. 74-937 (D.C. 1974)	Pending (pre-trial)	Private Counsel

Comment:

Case challenges exclusion of handicapped persons from airline flights.

State/Case	Status	Legal Advocates Involved
California		
Selph v. The Council of the City of Los Angeles, (C.D. Calif., filed Jan., 1974)	Pending (pre-trial)	Private Counsel

Comment:

This case raises the right of accessibility to voting places for handicapped individuals.

Ohio		
Friedman v. County of Cuyahoga, Case No. 895961 (Court of Common Pleas, Cuyahoga County, Nov. 15,1972)	Consent decree filed Nov. 15, 1972	Private Counsel

Comment:

Plaintiffs sought an injunction ordering Defendants to make necessary alterations so that public buildings would be accessible to physically handicapped persons. Consent decree provided that Defendants would provide ramps, a bell or signalling device or other appropriate means to assure ingress and egress to public buildings on the part of handicapped persons.

Section 7: RIGHT TO BE FREE FROM UNCONSTITUTIONAL COMMITMENT PRACTICES

Issues Involved:

1) Lack of due process procedures in commitment statutes.

2) Requirement of proof of dangerousness beyond a reasonable doubt on the basis of an overt act before a person can be involuntarily committed.

3) Requirement of individualized treatment plan and investigation of less restrictive alternatives as prerequisites to commitment.

4) Inability of parents to consent to the "voluntary" commitment of their children to a residential institution.

5) States may not incarcerate individuals for an indefinite period of time unless such individuals have been convicted of a crime or have been properly committed through constitutionally adequate procedures.

State/Case	Status	Legal Advocates Involved
Indiana		
Jackson v. Indiana, 406 U.S. 715 (1972)	Supreme Court decision	Private Counsel, NCLH

Principles Established:

It is a denial of equal protection and due process to confine a handicapped person indefinitely until he should become competent. A state must, within a reasonable time after a person has been declared incompetent to stand trial, either release him or seek to have him civilly committed. The court said that at the least, due process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed.

State/Case	Status	Legal Advocates Involved
Michigan		
Bell v. Wayne Cty. General Hospital, (June, 1974).	Decision, 1974	Private Counsel

Comment:

Holds unconstitutional sections of Michigan Civil Commitment Statutes.

New York		
Dale v. State of New York	On appeal	Mental Health Law Project

Comment:

The issue on appeal is damages for back wages, as well as for pain and suffering for violations of the plaintiff's 13th Amendment rights.

Terrenzio v. Kessler, N.Y. Sup. Ct.	Trial, Feb., 1973	Private Counsel

Comment:

This suit challenges the state's right to bill a patient or his family for the cost of his involuntary hospitalization.

State/Case	Status	Legal Advocates Involved
Pennsylvania		
Bartley v. Haverford St. Hospital, CA No. 72-2272 (E.D.Pa., filed Nov. 1972)	Trial Sept. 1974, decision pending	Mental Patient Civil Liberties Project, Youth Law Center, NCLH, U.S. Justice Dept. (Amicus)

Comment:

This case challenges the practice of voluntary commitment to residential institutions of minors by their parents without due process safeguards.

Dixon v. Attorney General of Pennsylvania, 313 F. Supp. 653 (1970)	Preliminary Decision 1970; Final Decision also L.W. Aug. 1974	Private Counsel

Comment:

Case held unconstitutional the statute committing "involuntary" mental patients without providing care and treatment.

State/Case	Status	Legal Advocates Involved
South Carolina		
Alexander v. Hall, CA No. 72-209 (S.C. Feb. 11, 1972)	Pending (pre-trial)	ACLU, Dept of Justice

Comment:

This case challenges the constitutionality of state commitment statutes and raises treatment issues for institutionalized persons.

South Dakota		
Schneider v. Rodeck, S.D. Cir. Ct. (May 9, 1974)	Decision May 9, 1974	South Dakota Legal Services, Private Counsel

Principles Established:

Involuntary commitment statutes must provide for: (1) adequate notice; (2) effective counsel; (3) clear definitions and standards.

Comment:

The court ordered 'controlled release' as a solution to remedy the violation and at the same time protect society. (Controlled release means release at the earliest practical date to the less restrictive type of treatment). The case enjoin defendants from using the statute.

State/Case	Status	Legal Advocates Involved
West Virginia		
State ex rel Willard Miller v. Robert Jenkins, No. 13340 (Supreme Court of Appeals of W.Va., filed Nov. 20, 1973	Decision granting habeas corpus March 19, 1974	Private Counsel

Comment:

Decree states that (1) State must determine whether person is competent to stand trial within 60 days of commitment. Person may not be confined for more than six months even if he has not become competent within that period; (2) State may not commit a person to a mental institution "attendant to a criminal prosection" unless it has been demonstrated by "clear, cogent, and convincing evidence" that he is "dangerous to himself or others"; (3) If a person is "so severly retarded that he is unable to stand trial...the state must either bring a civil action against (him) or discharge him."

Wisconsin		
State ex rel Gerald Haskings v. County Court of Dodge County, State No. 38 (Wis. Supreme Ct., 1974)	Decision, Feb. 18, 1974	Private Counsel

Comment:

Decision states that the State may confine a person found incompetent for 18 months without violating the Supreme Court ruling in Jackson v. Indiana. After a person is initially found incompetent to stand trial, he is entitled to hearings every six months on the question of his competency.

State/Case	Status	Legal Advocates Involved
Wisconsin (Con't.)		
Lessard v. Schmidt, 349 F. Supp. 1078 (E.D. Wisc., 1972)	Decision	Milwaukee Legal Services

Principles Established:

No significant deprivations of liberty can be justified without prior hearing on necessity of detentions. There must be adequate notice, full hearing, right to jury trial, person detained must be informed of basis of detention, standard on which he may be detained, names of examining physicians, etc. The standard for commitment must be an overt action of dangerousness to others as proven beyond a reasonable doubt.

Comment:

This is a most extensive case and its holding goes far beyond the limited principle listed above.

Section 8: RIGHT TO PROCREATE

Issues Involved:

1) The illegality of the traditional practice of compulsory sterilization for institutionalized handicapped persons.

2) The unconstitutionality of sterilizing minors or incompetent persons whether ordered by state officials, parents, guardians or other persons.

3) The lack of appropriate due process protections when sterilizations are performed.

State/Case	Status	Legal Advocates Involved
Alabama		
Wyatt v. Aderholt, 368 F. Supp. 1383 (M.D.Ala., 1973)	Decision Jan. 8, 1974	Private Counsel, Mental Health Law Project, U.S. Justice Dept. (Amicus)

Principles Established:

1. Sterilization must be in the "best interest" of the individual and may not be done for "institutional convenience"; 2. No one under 21 may be sterilized except as a "medical necessity"; 3. Written consent must be obtained and the person must be competent; where the person is incompetent, approval must be obtained from a) the director of the institution, b) a review committee, and c) a court of competent jurisdiction. 4. Residents must be provided counsel in proceedings concerning sterilization, 5. No coercion to encourage sterilization shall be permitted.

Comment:

Court issued an order promulgating guidelines for "voluntary" sterilization after earlier declaring Alabama's "compulsory sterilization" statute unconstitutional.

State/Case	Status	Legal Advocates Involved
California		
Holly Diane Kemp v. Joseph Kemp(Guardian), 1/ Civil 33721(Ct.of Appeal, Cal.), filed March 29, 1972	On appeal	Public Defender, ACLU

Comment:

The appeal raises various constitutional questions including right to privacy and equal protection.

State/Case	Status	Legal Advocates Involved
District of Columbia		
National Welfare Rights Organization v. Weinberger, 372 F. Supp. 1196 (D.D.C., 1974).	Decision, March 15, 1974, 372 F. Supp. 1196 (1974)	NWRO, Private, CLSP

Principles Established and Comment:

Opinion and order avoided constitutional arguments but found HEW lacked statutory authorization to provide Federal funds for the "sterilization of any person incompetent under state law to consent to such an operation whether because of minority or mental deficiency". HEW was enjoined from providing funds for sterilizing such persons. It was also found that consent procedures in HEW regulations were deficient in that they did not adequately advise persons that benefits under Federal programs could not be withheld or withdrawn because of failure to consent to sterilization. It was ordered that such advice must "appear prominently at the top of the consent document."

State/Case	Status	Legal Advocates Involved
Indiana		
AL v. G.R.H., C.A. No. 1-1273 A 213 (Ct. of Appeals, 1st Dist.)	Decision on Appeal to Indiana Ct. of Appeals	Private Counsel NCLH

Principles Established:

The parent lacks legal authority to have her child sterilized. A minor retains his or her fundamental right to procreate despite his or her handicapping condition.

Comment:

The case is on appeal to the Indiana Court of Appeals.

Michigan		
Densmore v. Yudashkin, K74-129CA(9), W.D. Mich., filed Apr. 1974)	Pending (Pre-trial)	Private Counsel and Michigan Legal Services

Comment:

Challenges constitutionality of state statute and asks for damages.

State/Case	Status	Legal Advocates Involved
North Carolina		
Cox v. Stanton, M.D., CA No. 800 (E.D.N.C.), filed July 12, 1973	Pending hearing (pre-trial)	Private Counsel
Trent v. Wright, M.D., (E.D.N.C.), filed Jan. 18, 1974	Pending hearing (pre-trial)	Private Counsel

Comments: (for above two cases)

Suits contend that State statute which sets up a "Eugenics Board" and under which Plaintiffs were sterilized is: (1) An arbitrary exercise of State power; (2) Lacks adequate procedural safeguards; (3) Makes grounds for sterilization which are "impermissibly vague"; (4) Denies an 18-year old notice and right to be heard on a matter of "vital importance to her life and liberty"; (5) Violates the right to privacy; and (6) Invidiously discriminates against persons on account of race, poverty, sex, and status of unwed parenthood.

Ohio		
Wade v. Bethesda, 337 F. Supp. 671 (S.D. Ohio 1971)	Decision; plus an out of court settlement	Private Counsel

Principles Established:

A judge is liable for damages when he orders a sterilization of a handicapped person under his 'equity' powers as this is acting outside his scope of authority. There is no judicial immunity for said action.

Comment:

There was an out-of-court settlement as to the damages.

State/Case	Status	Legal Advocates Involved
Pennsylvania		
Serena v. Leezer, C.A. No. 74-313, (U.S. Dist. Ct., W.Dist. Pa., Apr., 1974)	Pre-trial	Private Counsel

Comment:

Challenges constitutionality of state statutes and asks for damages.

Section 9: RIGHT OF EQUAL ACCESS TO ADEQUATE MEDICAL SERVICES

Issues Involved:

1) The illegality and unconstitutionality of refusal to provide medical services to a handicapped person in a situation where such services would be available to a "normal person."

2) The inability of parents and guardians to refuse consent to lifesaving medical services for their children.

3) The duty of physicians and hospitals to provide medical treatment in emergency situations.

State/Case	Status	Legal Advocates Involved
Maine		
Maine Medical Center v. Houle, Civil Action Docket No. 74-145 (Superior Ct., Cumberland, Maine, Feb. 14, 1974)	Decision entered on Feb. 14, 1974	Private Counsel

Principles Established:

1. "The most basic right enjoyed by every human being is the right to life itself." 2. "(T)he doctor's qualitative evaluation of the value of the life to be preserved is not legally within the scope of his expertise," 3. "Being satisfied that corrective surgery is medically necessary and medically feasible, the court finds that the defendants herein have no right to withhold such treatment and that to do so constitutes neglect in the legal sense."

Comment:

The court ordered surgery to be performed to correct a blocked esophagus, after the child's parents had refused to consent to such surgery because the child had several serious physical handicaps at birth

State/Case	Status	Legal Advocates Involved
New Jersey		
In re Baby Girl Obernauer, Order Relating to Protective Services (Juvenile and Domestic Relations Court of Morris County, Dec. 22, 1970)	Protective Service Order Issued Dec. 22, 1970	State of New Jersey, Bureau of Children's Services

Principles Established:

Parents' refusal to authorize life-saving operation to correct intestinal blockage is ground for issuing a Protective Services Order making the child a ward of the court.

Comment:

This case was discussed in an article in Life Magazine on Janurary 14, 1972.

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